

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

L.T AND M.T. by their parent Jeffrey N. Thomas,
JEFFREY N. THOMAS as parent of L.T and M.T.;
T.L., B.L., R.L., A.L. by their parent Karen
LeClair; KAREN LECLAIR as parent of T.L.,
B.L., R.L., A.L.; J.S. by his parent Danielle
Schipano; DANIELLE SCHIPANO as parent of
J.S.; B.P by his parent Andrea Penamora,
ANDREA PENAMORA as parent of B.P.; E.W. by
her parent Joseph Whitehead; and JOSEPH
WHITEHEAD as parent of E.W.

Plaintiffs,

vs.

HOWARD A. ZUCKER, in his official capacity
and in his individual capacity,

Defendant.

Civil Action No.: 21-cv-1034 (LEK/DJS)
Order to Show Cause

**THE AFFIRMATION OF THOMAS MARCELLE MADE IN SUPPORT
OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION
INCLUDING AN AFFIRMATION OF SERVICE.**

THOMAS MARCELLE, being a duly licensed and a practicing attorney of the State of New York and of the United States District Court for the Northern District of New York, affirms under penalty of perjury as follows:

1. I am the attorney for plaintiffs in the above captioned action.
2. I am familiar with the facts that give rise to this cause of action and make this affirmation in support of plaintiffs' accompanying Order to Show Cause.
3. I incorporate, by reference, the allegations contained in the Verified Complaint as if fully set forth herein.
4. Plaintiffs make a motion for a preliminary injunction via an order to show cause.
5. Temporary relief **is** requested.

6. Based upon the verified Complaint and for the reasons stated in the accompanying memorandum of law, plaintiffs have suffered and will continue to suffer irreparable injury.
7. The irreparable injury consists of defendant's violation of plaintiff students' First Amendment rights by mandating that the students wear masks that cover the lower half of their faces during the entire school day, which blocks out the non-verbal communication that is exhibited by the lower half of the face in addition to compromising verbal communication as well. This negatively impacts the plaintiffs' ability to convey communication and speech as well as perceive and receive communication and speech from pupils and teachers alike, who are also masked.
8. For the reasons stated in the accompanying memorandum of law and supporting declarations, these infringements on plaintiffs' rights constitute an irreparable injury to plaintiffs.
9. This violation is continuing, and plaintiffs cannot properly exercise their right to convey and receive free and unhindered communication while being forced to cover the lower half of their faces —this right is at the core of the First Amendment's protection.
10. Based upon the Verified Complaint and for the reasons stated in the accompanying memorandum of law and declarations plaintiffs will likely prevail on their constitutional claims.
11. Normally, under the Local rules, plaintiffs would have to wait more than a month to be heard before he could be heard.
12. As a practitioner in this Court for 32 years, it has been my experience that a proper

motion for a preliminary injunction is heard via Local Rule 7(e) to prevent the continuation of an irreparable injury.

13. Therefore, plaintiff asks the Court to allow him to proceed under Rule 7.1(e) via an order to show cause and seek a temporary restraining order and timely preliminary injunction.

/s/ Thomas Marcelle

Thomas Marcelle, Esq. (Bar Roll No. 102117)

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